



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

May 17, 2011

Amerivest Development LLC
c/o Mitchell & Julie Williams
PO Box 1702
Ellensburg WA 98926-1929

RE: AMENDED Water Right Change Application No. CS4-01968sb11a (KITTT-10-12)

This modification order SUPERSEDES the previous order dated April 8, 2011. Stockwater has been added and the development schedule has been amended to read "see Board's ROE".

In accordance with RCW 90.80.080 the Department of Ecology (Ecology) has reviewed the Record of Decision (ROD), Report of Examination (ROE), and all comments, protests, objections and other relevant information submitted by the Kittitas County Water Conservancy Board (the Board) for the above referenced application for change.

Ecology has **modified** the decision of the Board and the proposed change/transfer of water right is **approved** under the following conditions:

Summary of Ecology's Final Order

MAXIMUM CUB FT/ SECOND		MAXIMUM ACRE-FT/YR		TYPE OF USE, PERIOD OF USE		
<u>Instream Flow Right A:</u> 1.123 cfs from April 1 through June 30; and 0.56 cfs from July 1 through Oct. 31		<u>Right A:</u> up to 51.4 af of consumptive use, and 287.72 af of non-consumptive.		<u>Right A:</u> Instream flow; up to 339.12 acre-feet in the primary reach from April 1 through Oct. 31* (Intended for Instream flow in perpetuity).		
<u>Instream Flow Right B:</u> 0.234 cfs from April 1 through June 30; and 0.118 cfs from July 1 through October 31		<u>Right B:</u> up to 71.53 af of consumptive use.		<u>Right B:</u> Instream flow; up to 71.53 acre-feet in the primary reach from April 1 through Oct. 31, <u>and secondary reach</u> from April 1 through July 15 ** (intended for mitigation of future residential water use.)		
<u>Stockwater:</u> 0.28 cfs		<u>Stockwater:</u> 1.43 af		<u>Stockwater:</u> year-around		
SOURCE				TRIBUTARY OF (IF SURFACE WATER)		
Manastash Creek				Yakima River		
¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
					39	Kittitas



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AT A POINT LOCATED:
PARCEL NO.

(No diversion of water from Manastash Creek)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD

Instream flow:

Primary Reach: within the ordinary high water mark of Manastash Creek commencing at the Keach Jenson Ditch diversion, which is located 550 feet south and 650 feet east from the North Quarter corner of Section 14 within the NW ¼ NE ¼ of Section 14, T. 17 N., R. 17 E.W.M., and ending at the confluence of Manastash Creek and the Yakima River.

Secondary Reach for Instream Flow Right B: Commencing at the confluence of Manastash Creek and the Yakima River and terminating at the confluence of the Columbia River and the Yakima River.

*The secondary reach for Instream Flow Right A has been stricken as an authorized place of use.

Stock Water: Within that portion of the NE1/4NE1/4 of Section 14 lying north and west of Manastash Road and east of the Kittitas Reclamation District Canal; that portion of the SE1/4SE1/4 of Section 11 lying S. of Manastash Creek; and the N1/2NW1/4NW1/4 of Section 13, ALL in T. 17 N, R. 17 E.W.M.

PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER TO PUT TO FULL USE BY THIS DATE:
See Board's ROE	See Board's ROE	See Board's ROE

Ecology has **MODIFIED** the decision of the Board as follows:

- 1) The Board's Decision has been MODIFIED as noted in the table above.
- 2) The following language is added to the "*History of water use*" section within the Board's ROE: The subject right is an 1874 priority class 3 water right on Manastash Creek. In most years Manastash Creek does not have sufficient flow to allow for the exercise of this right throughout the irrigation season. It has been determined that the shut off date for all water use associated with the 1874 class 3 rights typically falls between July 15 and August 15. In exceptional water years there may be sufficient flow to allow for the full exercise of this right through October 15 (for example the 2006 season). This conclusion is based on Manastash Creek stream gage flows, the schedule of adjudicated Manastash Creek water rights, and historic information regarding regulation of Manastash Creek.
- 3) For Instream Flow Right A: the secondary reach authorized by the Board has been STRICKEN. The 17.7 acres associated with flow right A are not proposed to be fallowed. The authorization of the secondary reach and the corresponding increase of the target flow at Parker has the potential to negatively impact TWSA, and subsequently impair existing rights.

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- 4) **The following provision is ADDED to the Provisions section within the Board's ROE:

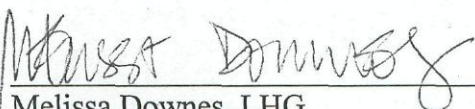
The secondary reach is authorized for Instream Flow right B contingent upon the applicant providing documentation to demonstrate that the 24.655 acres associated with Instream flow Right B has been fallowed as noted in the Board's ROE. Furthermore, when portions of instream flow right B water are eventually exercised for residential mitigation, the target flow at the Parker Gage shall be reduced proportionate to the quantity of water authorized for residential development.

This Decision may be appealed pursuant to RCW 34.05.514(3), RCW 90.03.210(2), and Pretrial Order No. 12 entered in *State of Washington, Department of Ecology v. James Acquavella, et al.*, Yakima County Superior Court No. 77-2-01484-5 (the general adjudication of surface water rights in the Yakima River Basin). The person to whom this Decision is issued, if he or she wishes to file an appeal, must file the notice of appeal with the Yakima County Superior Court **within thirty (30) days of receipt of this Decision**. Appeals must be filed with the Superior Court Clerk's Office, Yakima County Superior Court, 128 North 2nd Street, Yakima WA 98901, RE: Yakima River Adjudication. Appeals must be served in accordance with Pretrial Order No. 12, Section III ("Appeals Procedures"). The content of the notice of appeal must conform to RCW 34.05.546. Specifically, the notice of appeal must include:

- The name and mailing address of the appellant;
- Name and address of the appellant's attorney, if any;
- The name and address of the Department of Ecology;
- The specific application number of the decision being appealed;
- A copy of the decision;
- A brief explanation of Ecology's decision;
- Identification of persons who were parties in any adjudicative proceedings that led to Ecology's decision;
- Facts that demonstrate the appellant is entitled to obtain judicial review;
- The appellant's reasons for believing that relief should be granted; and
- A request for relief, specifying the type and extent of relief requested.

The "parties of record" who must be served with copies of the notice of appeal under RCW 34.05.542(3) are limited to the applicant of the decision subject to appeal, Ecology and the Office of the Attorney General.

All others receiving notice of this Decision, who wish to file an appeal, must file the appeal with the Yakima County Superior Court within **thirty (30) days of the date the Order was mailed**. The appeal must be filed in the same manner as described above.



Melissa Downes, LHG
Acting Section Manager
Water Resources Program/CRO

MD:JK:gh/110498

Enclosure: *Construction Notice*

Certified Mail: 7007 2560 0001 9535 2574

cc: Janet Rajala, Department of Ecology, ERO (Email/pdf)
Bart Bland
Chery Varnum, Kittitas County Water Conservancy Board
Jeff Slothower, Lathrop, Winbauer, Harrel, Slothower, & Denison, LLP
Philip Rigdon, Director, Natural Resources Division, Yakama Nation